

*FRIERSON GRAVES*

Proposals.

1. No real property held for municipal purposes shall be sold or leased by the City of Memphis without submission of the contract for sale or lease to the City Council for approval of the price, terms and conditions of such sale or lease. No real property shall be purchased or leased by the City of Memphis without submission of the contract for or lease for approval of the price, terms and conditions by the City Council.
2. No sale of the Memphis Light Gas & Water Division or any division thereof providing energy services such as electric gas or water shall be made unless submitted to and approved by the City Council and thereafter submitted by the City to a referendum vote for approval by the citizens of Memphis at any municipal or state election occurring at least 60 days after submission of the contract for sale and approval thereof by the City Council. Said referendum shall be required not only for sale of the entire Memphis Light Gas & Water Division but also for any particular division such as the gas division or any segment thereof such as the gas division servicing any particular city or the unincorporated area within Shelby County.

Discussion.

The sale or lease of real property by the City of Memphis or the purchase or lease of property by the City of Memphis is treated very generally in the present City Charter. Section 452 merely provides that "the governing authorities of the City of Memphis shall have full authority to convey any property acquired by them or held by the City of Memphis not used for municipal purposes and to give good title thereto to any purchaser."

This provision clarifies and makes certain that the City shall not sell property not needed for municipal purpose or shall not lease or buy property needed for municipal purposes unless not only the Mayor but the City Council approves the price, terms and conditions of either the sale or lease. There is no question that good government requires that both the Mayor and the Council agree to either the sale to the City or the sale by the City of property and similarly of leases.

A referendum is required for the sale or partial sale of the utility. The Memphis Light Gas & Water Division operates not only in the City of Memphis but in Shelby County and other cities within Shelby County by permission. A consent or franchise agreement has been given by Bartlett, Germantown, Collierville and others as well as Shelby County for the utility to operate. If anyone attempted to purchase the Memphis utility, the purchaser could not operate outside the City of Memphis without obtaining franchises from these various governmental bodies. Any purchaser would use some debt to complete the purchase. The purchaser would have to pay off the debt. The new owner would charge rates sufficient to pay the debt and increase rates to the citizens of the City, in order to meet the debt payments. Likewise, the other cities might elect to run their own utilities and not permit a purchaser to take over. Finally, the purchaser of any electric system could not buy power from the

Tennessee Valley Authority since TVA may only sell power to municipalities or non-profit co-ops.

Proposal.

3. The Memphis Light Gas & Water Division should become a regional utility authority.

Discussion.

Presently the Memphis Light Gas & Water Division is authorized to serve electrical and gas customers within the City of Memphis and Shelby County. The other municipalities have granted Memphis their consent or a franchise for electric and gas. Water service is limited. State law authorizes consent mergers and acquisitions. The City of Knoxville has amended its Charter to make sure that the Knoxville utility may extend beyond Knox County by mergers and acquisitions.

The Memphis Light Gas & Water Division should be authorized to provide utility services outside Shelby County and become a regional utility. It should be able to do so by merging or acquiring utilities adjacent to it in other Tennessee counties provided those authorities give their consent. Additionally, MLGW or a subsidiary should be authorized to extend service into Mississippi adjacent to the service area and provide any utility services including electricity, gas and water.

Among the provisions included in such a proposed charter amendment for a regional authority are:

- a. Authorize expansion of the Board of Commissioners to a maximum of 9 or 11 members so as to provide representation for Shelby County and outlying municipalities (one or two members as set by ordinance) and to provide representation for any future extension into other counties in Tennessee or into Mississippi. (add additional members to maximum).
- b. Continue to have the City of Memphis provide for nomination of the President and approval with a proviso that the President should either be selected from within Memphis Light Gas & Water Division provided the person has 5 or more years service or that the President have 5 or more years service with a public or private utility so as to be experienced in the utility area.
- c. The City Council would approve by ordinance any increase of the number of Board members and any contracts for the extension of utility service into other areas.
- d. The Board members representing the County and outlying cities in Shelby County would be appointed by rotation by the other government bodies.
- e. As a regional authority the individual approval of contracts and salaries by the City Council would be eliminated. MLGW would be required to submit its

overall annual budget and rate schedules in said budget to the City Council for annual approval.

- f. Board of Commission members appointed by the City of Memphis of the utility would still be subject to removal by the Mayor with the approval of the City Council as is still provided so as to ensure accountability. A similar provision would be provided for other governments to remove member.

This amendment would require a detailed proposal. I had prepared a draft proposal for discussion purposes some years ago. I would submit a detailed proposal to the Charter Commission for their discussion, amendment and approval if requested.

Proposal.

4. Pension amendment. From and after the effective date of this Charter Amendment, no future elected officials, part-time employees or members of Boards of Commission shall be members of any pension plan of the City of Memphis. Nothing shall prohibit the City Council from authorizing by ordinance the establishment of individual retirement accounts for these persons as permitted under federal law. Contributions by these persons to an individual retirement account permitted by law would be authorized but no funds of the City of Memphis or any of its agencies shall be contributed. All pension accounts shall be funded solely from the salaries of the individual officials or employees who could invest their own investments.

*exclude part-time officials*

A part-time employee would be one averaging less than 30 hours per week of employment with the City of Memphis or any of its agencies.

Discussion.

The actuarial soundness of pension plans is very important. The City of Memphis eliminated in 2004 the provisions in its pension plan which would allow employees, appointed persons or elected officials with as little as 12 years of employment to begin receiving a pension for life. The actuarial studies done by the City should indicate that the cost of these pensions is in the hundreds of thousands of dollars.

Elected officials, both the Mayor or members of the City Council should not have the authority to set the terms and provisions of their own pensions which could have significant financial effect upon the City pension plan and city finances. In past years, salaries were substantially lower and the cumulative effect was not as significant as compared to the large salaries of this date. Any attempt to allow pensions to begin at such an early age for such few years of service is harmful. Pensions should normally begin only after age 55 or twenty-five (25) years of service. The same principle should apply to persons hired on a part-time basis who are allowed to become members of the pension system. Finally, members of Boards of Commissions normally serve for little or no pay and should have no need for pensions provided from the City.

Proposal.

Appointed officials or employees. Except for the Chief Administrative Officer and Division Directors, no full-time or part-time employees of the City of Memphis shall be appointed unless subject to approval of the City Council. The positions of all appointees are to be outlined in an ordinance by the City Council. All such appointed employees shall be nominated by the Mayor and approved by the City Council. Except for the Chief Administrative Officer and Division Director, the City Council, by ordinance, may eliminate any appointed position presently contained in the City Charter.

Discussion.

The Charter of the City of Memphis now provides for most employees of the City to be covered by civil service. Appointed employees in the past have had the benefit of some special privileges. If the Mayor wishes to establish a number of appointed officials or employees, they should be identified by ordinance and appointed with the approval of the Council and not employed without substantial checks and balances available through the budget and approval process.

Budget process and Controls.

Discussion.

The City Charter now generally provides the Mayor that is in charge of the administration of the City. The City Council is in charge of the budget. Because the City Council is in charge of the purse strings of the City, the City Council has sufficient powers without other special provisions limiting the administration.

The City Council can return to a line item budget and provide that funds cannot be transferred from one department or function to another without its consent by resolution or amendment of the budget ordinance. Likewise the City Council may provide for lump sums in the budget for certain projects such as repairs and require that the spending of said funds by the letting of a contract or the hiring of outside person or persons cannot be done without the contract or proposal being submitted back to the City Council for the final appropriation of the funds including approving the terms and conditions of either the contract or the proposal. By this method, the City Council can have sufficient authority over the expenditure of funds without infringement on day to day operations of the administration.

If there are certain areas that this Charter Commission wishes to consider and my experience as City Attorney would be helpful, I would be glad to provide any insight or legal advice on a pro bono basis.